90-189

No. _____



In The

# Supreme Court of the United States

October Term, 1990

FRANK LANDRY, et al.,

*Cross-Petitioners*

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO, TACA INTERNATIONAL AIRLINES and CHARLES J. HUTTINGER,

*Cross-Respondents*

## CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TOM W. THORNHILL, ESQ.
Counsel of Record
THORNHILL & ASSOCIATES
A Professional Law Corporation
1308 Ninth Street
Slidell, Louisiana 70458
(504) 641-5010

RICHARD A. MACHEN, ESQ.
1400 Gause Boulevard
Slidell, Louisiana 70458

R. NEAL WILKINSON, ESQ.
835 Louisiana Avenue
Baton Rouge, Louisiana 70802
*Attorneys for Cross-Petitioners Frank Landry, et al.*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the application of the six-month Statute of Limitation, in 10(b) of the NLRA, is correct when former employees file suit against a labor union for violation of its duty of fair representation and against their former employer for its breach of the collective bargaining agreement even though the facts do not fit the *DelCostello* holding and this Court has recently revisited *DelCostello* in *Chauffeurs* to find the trust analogy a closer fit for the breach of duty of fair representation action?

## LIST OF PARTIES TO THE PROCEEDINGS

The Air Line Pilots Association, International, AFL-CIO and Charles J. Huttinger were defendants in the district court, appellees in the court of appeals and are cross-respondents in this court.

TACA International Airlines, S.A. was a defendant in the district court, an appellee in the court of appeals and is a cross-respondent in this court.

Fringe Benefit Administrators, Ltd. was a defendant in the district court, and intervenor in the court of appeals and is a respondent in this court.

The plaintiffs in the district court, appellants in the court of appeals, cross-petitioners and respondents in this court, are: Frank Landry, Jules Corona, Charles South, Robert A. Massa, Don Johnson, T.Q. Howard, the Succession and Beneficiaries of Joe Hass, Walter Keller, Don Jenkins and his former wife, Zeda Jenkins, Emile Cerisier, and M. Letona. The following were plaintiffs in the district court but were not appellants in the court of appeals, and are not cross-petitioners in the court: Thomas Brignac, Robert Lukenbell, Bert Haffner, and Gary Zriek.

TABLE OF CONTENTS

# TABLE OF AUTHORITIES

No. _____

In The

# Supreme Court of the United States

October Term, 1990

FRANK LANDRY, et al.,

*Cross-Petitioners*

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO, TACA INTERNATIONAL AIRLINES and CHARLES J. HUTTINGER,

*Cross-Respondents*

## CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Frank Landry, Jules Corona, Charles South, Robert A. Massa, Don Johnson, T.Q. Howard, the Succession and Beneficiaries of Joe Hass, Walter Keller, Don Jenkins and his former wife, Zeda Jenkins, Emile Cerisier, and M. Letona ("the airlines pilots" or "TACA Pilots") cross-petition this Court to issue a writ of certiorari to the United States Court of Appeals for the Fifth Circuit to review the judgment in *Landry, et al. v. Air Line Pilots Association International, et al.*, No. 88-3363 (5th Cir., Jan. 31, 1990), modified April 27, 1990.

## OPINIONS BELOW

The opinion of the court of appeals, which has not yet been officially reported, is reproduced at App. A[1]. The unreported opinions of the court of appeals on petitions for rehearing are reproduced at App. H and App. I. The unreported opinions of the United States District Court for the Eastern District of Louisiana are reproduced at App. C through App. E. Set out as Appendix AA is the opinion of the District Court (omitted from ALPA's brief) regarding it having to consider the equitable tolling argument on the request of the airline pilots and that such a request was not sanctionable.

## JURISDICTION

The opinion and judgment of the court of appeals were entered on January 31, 1990. Timely petitions for rehearing were granted in part and denied in part on April 27, 1990. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

This Cross-Petition is filed in accordance with Rule 13.5 of the Rules of the Supreme Court of the United States adopted December 5, 1989, effective January 1, 1990.

---

[1] "App. A-E" refers to the appendix annexed to the Original Petition for issuance of a writ of certiorari filed in this matter by the Airline Pilots Association (ALPA).

"R. ___" refers to the page number of the Record on Appeal to the Fifth Circuit Court of Appeals.

## STATUTES INVOLVED

Set out in Appendix BB are the relevant portions of the following acts:

1. § 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. § 185(a) & (b) (1982 ed.).
2. National Labor Relations Act, 49 Stat. 449, 29 U.S.C., § 159(a) & (b) (1982 ed.).
3. 10(b) of the National Labor Relations Act, 49 Stat. 453, at amended, 29 U.S.C., § 160(b).
4. Rules of Decision Act, Rev. Stat. § 721, 1 Stat. 92, the First Congress, 1789; 28 U.S.C. § 1652.

## STATEMENT OF THE CASE

The airline pilots brought this suit against TACA and ALPA alleging that ALPA violated their duty of fair representation, TACA violated the collective bargaining agreement and both violated RICO along with Charles J. Huttinger. They also alleged that TACA, ALPA and FBA breached their fiduciary duties under ERISA in the implementation and Administration of the Pilots retirement plan.

### THE FACTS

The history necessary to understand the illicit motivation of the defendants in this case dates back to at least the early 1960's. The plaintiffs are former pilots employed by TACA Airlines, and represented by their union, ALPA. Pursuant to a Letter of Agreement dated February 24, 1982, which supplemented and modified the

existing collective bargaining agreement, ALPA and TACA purportedly agreed to establish a retirement plan for TACA pilots. In addition, TACA agreed to make monthly contributions commencing March 31, 1982. Into a trust account in an institution designated by ALPA's bargaining representative, Charles Huttinger, also a TACA pilot.

In 1983, while negotiating a collective bargaining agreement, TACA tried to breach its existing agreement, withdrew its recognition of ALPA, and impose new working conditions on its pilots. Only a court ordered injunction prevented TACA from doing so. *See Air Line Pilots Association v. TACA International Airlines, S.A.*, 748 F.2d 965 (5th Cir. 1984) *cert. denied*, 471 U.S. 1100 (1985).

TACA for years sought to move its base of operations from New Orleans to El Salvador, through whatever means, legal or illegal, available. Some sixteen years ago, the Fifth Circuit Court of Appeals affirmed a determination that TACA was acting in bad faith in order to undermine collective bargaining. *Ruby v. TACA International Airlines, S.A.*, 439 F.2d 1359 (5th Cir. 1971). In the Spring of 1985 ALPA was faced with threats of multi-million dollar litigation from TACA, for ALPA directed labor sabotage of TACA's equipment. In order to meet TACA's threats and quickly settle the negotiations (no matter how disfavorable to the pilots) Huttinger conspired with the ALPA election board to have an election thrown out on a procedural irregularity in voting. On July 15, 1985 a new election was certified, and this time Huttinger was installed as the new Captain Representative. Nine days later Huttinger negotiated the Pilots Agreement.

Huttinger (who due to medical problems could not fly) had lost his status to negotiate, to vote, to represent the union, and was to be automatically severed from the employment of TACA after five years of sick status, all in accordance with the 1980 contract. To avoid loss of seniority benefits, and the lump sum payments he could receive, Huttinger refused to negotiate for ALPA unless all of the foregoing was restored to him each month, before negotiations began. TACA agreed to make these alleged payments to Huttinger to induce ALPA to negotiate. The union membership was unaware of this.

On July 1, 1985, the pilots received a telegram from ALPA, which restates accusations that some pilots are intentionally sabotaging airline equipment. TACA threats to prosecute and to institute civil suit followed and were only dropped after Huttinger agreed to TACA's terms. Because, according to ALPA's president, ALPA was in no position to afford protracted litigation.

On July 3, 1985, Charles Huttinger writes the pilots, informing them that "TACA's despicable intentions are clear", TACA is "determined to destroy ALPA at TACA, escape U.S. laws, and move to [El] Salvador". Negotiations had completely broken down and would not resume for another thirty (30) days.

Huttinger describes TACA's proposal to cease contributions to the pension plan as illegal, unfair, and ridiculous. "Regardless of the outcome of these negotiations, TACA must contribute to the plan." The plan "should not be the subject of these negotiations."

On July 24, 1985, the pilots are informed by Huttinger that the association has reached an agreement with TACA. A copy of the agreement is to be sent to them

shortly. (No details are provided) The tentative agreement is "(subject to ratification)". Approximately a week later (August 3, 1985), the pilots are informed by TACA that they have twelve (12) days to quit and receive severance and retirement benefits, or stay on and move to El Salvador. The pilots must decide which option they choose. If they make no decision, or protest, then they lose severance pay and other benefits and they lose the right to continue employment. No mention is made of ratification.

The July 24, 1985 "Pilots' Agreement" superseded the 1980 collective bargaining agreement, and provided that ALPA would not hinder or oppose TACA's relocation outside the United States. The agreement forced the pilots to accept termination and retirement unless they chose to move themselves to El Salvador.

TACA's intentions were obvious. It only wanted the senior experienced American captains to stay on long enough to help keep the airline running. Once the cheaper paid Salvadorian pilots gained enough experience to be promoted as captains, the American captains would be expendable.

Although the permanent contract made a token offer to keep all pilots on, it was in fact not even that. It was a material, intentional misrepresentation of fact. Fredrico Bloch, TACA's vice-president, informed one co-pilot, Walter Keller, that TACA was not interested in keeping any North American co-pilots.

Therefore, TACA not only misrepresented its desire to employ all pilots in the August 3, 1985 letter, it also misrepresented the same stated desire to employ all pilots in the July 24, 1985 bargaining agreement.

The move up to larger aircraft had the base not relocated, along with yearly increases in seniority, meant that many pilots were anticipating $120,000 to $200,000 salaries, plus benefits, prior to mandatory retirement at age 60. Instead they were forced by the fraudulent acts of ALPA, TACA and Huttinger into accepting one time lump sum severance pay offs ranging from about $16,000 to $39,000, and nonexistent retirement pensions.

Working under too short a time period to make an informed decision, the pilots reluctantly agreed to accept mediocre severance benefits, assuming that they had the substantial portion of their retirement plan available. In early 1986, when no benefits were forthcoming, several pilots tried contacting ALPA and Huttinger. The pilots were told that because TACA ceased its contributions in July 1985, the plan automatically terminated and their retirement benefits were unavailable. To date, the pilots have received no funds from the retirement system. Despite repeated requests, Charles Huttinger refused to give out any information. As it turns out, one pilot is receiving retirement benefits – Charles Huttinger.[2] It is believed that Huttinger began receiving benefits from the fund in November of 1985, two months after the plan had terminated.

Both Huttinger and TACA claimed they were making every effort to completely document the plan pursuant to the Letter of Agreement dated February 24, 1982. In fact, neither TACA, ALPA nor Huttinger made any effort to

---

[2] One other pilot, R.B. Hall, is receiving benefits. He retired in June of 1982, and applied long before the July, 1985 agreement was executed.

document the trust agreement as an ERISA Plan. They only moved forward in April 1985, when this Court rejected TACA's effort to unilaterally move its base and abrogate the collective bargaining agreement by denying TACA's writ application, effectively sustaining Judge Feldman's injunction.

The pension plan was created with a fraudulent eye toward quickly terminating it. Documented in July, 1985 with a retroactive establishment date of February 1, 1982, but then immediately made the object of implicit termination by the July 24, 1985, Pilots' Agreement (a fact unknown to the airline pilots), this plan served only one pilot – Huttinger. Obviously, as head of the retirement committee Huttinger was in a position of control. Huttinger was treated as vested in the plan although his status was contractually terminated.

Required notices of termination of the plan upon cessation of contributions by TACA were not given by ALPA, the plan trustee, FBA, the plan administrator and mandatory fiduciary, or TACA, the employer.

Huttinger moved quickly to protect himself. In return for TACA's monthly restoration of Huttinger to the Active Seniority List, his hospital benefits and sick pay, Huttinger negotiated a quick agreement substantially favorable to TACA. TACA was relieved of its heretofore "non-negotiable" obligation to continue funding the plan. By keeping the other pilots in the dark, and applying for benefits timely, Huttinger could assure himself of getting paid. He quickly filed for retirement while he, ALPA, TACA and the FBA intentionally neglected their duty to notify the pilots of the consequences of the termination of

TACA contributions to the plan under the proposed Pilots' Agreement. ALPA, the plan trustee, instructed FBA to pay Huttinger and he began to collect retirement pay at age 56 while older men were being deprived of their jobs and to this date their hard earned retirement pay.

## PROCEEDINGS BELOW

### i. District Court

Only July 23, 1986, (R. 1) the plaintiffs filed a complaint against the Airline Pilots Association (ALPA), Fringe Benefits Administrators, Ltd. (FBA) and TACA International Airlines, S.A (TACA) for violations of the Railway Labor Act (RLA) 45 U.S.C. 151, et seq., the National Labor Relations Act (NLRA), 29 U.S.C. 1001-1461 (ERISA) and La. C.C. Art. 2315, including claims of fraud and collusion by defendants requesting damages and a declaratory judgment.

FBA filed an answer on October 22, 1986, (R. 261). ALPA and TACA filed motions to dismiss. On January 13, 1987, (R. 383-386) the pilots noticed the depositions of Charles Huttinger and First National Bank, eventually postponed at the request of defendants. On February 10, 1987, (R. 408) the pilots filed motions to transfer and consolidate this matter in the injunction proceeding, previously rendered by Judge Feldman. The defendants objected. On March 27, 1987 the pilots' motion to transfer was denied. On March 11, 1987, (R. 464) the pilots filed a motion to amend the complaint adding a second count based on RICO violations and adding Charles Huttinger as a defendant. Over oppositions of ALPA and TACA, the

amended complaint was ordered filed on April 6, 1987, (R. 492)

In May, ALPA, TACA and Huttinger (R. 610) filed motions to dismiss the new complaint. The court, (R. 758) denied motions to dismiss without prejudice and ordered the pilots to file a RICO case statement, which was filed on August 25, 1987 (R. 764). November 18, 1987, (R. 1007) the defendants moved for protective orders to quash depositions of TACA, Huttinger and FBA which the pilots had noticed for October. On December 11, 1987, (R. 1104) the court granted the protective order.

On December 14, 1987, (R. 1108) the pilots filed a motion for the court to reconsider the application of tolling principles to the dismissal of their DFR claims. December 23, 1987, (R. 1117) the court denied a request by the pilots to file supplemental brief in support of motion to reconsider. On February 29, 1988 the court denied the pilots' motion for reconsideration and ordered the pilots to respond to defendants' request for sanctions. On March 17, 1988 the court rendered reasons dismissing the pilots' new claims against TACA, ALPA and Huttinger. On April 28, 1988 the court entered a Rule 54(b) judgment dismissing ALPA and TACA, and on May 4, 1988, one dismissing Huttinger.

### ii. Court of Appeals

The court of appeals affirmed dismissal of the DFR/breach of contract claim on limitations grounds. The court found no basis for equitable tolling, as plaintiffs were "on inquiry notice of the labor law claims they

raised in this suit in the spring or summer of 1985." App. A, 15a.

With respect to the RICO claim, the court of appeals affirmed the dismissal of TACA but reversed as to ALPA and Huttinger.

The court also reversed the grant of summary judgment on the ERISA claim as to ALPA and TACA.

The case was remanded for trial on the merits.

## REASONS FOR GRANTING THE WRIT

The case presents issues of great importance which merit this Court's review.

### I. THE APPLICATION OF THE SIX-MONTH STATUTE OF LIMITATIONS OF SECTION 10(b) OF THE NLRA TO CLAIMS WHICH ARE AGAINST THE EMPLOYER AND UNION, BUT WHICH ARE NOT ANALOGOUS TO ARBITRATION CLAIMS, CONFLICTS WITH DECISIONS OF THIS COURT AND PRESENTS AN ISSUE OF COMPELLING IMPORTANCE WARRANTING THIS COURT'S REVIEW.

#### A. The rationale of *DelCostello* for the application of the six-month Statute of Limitation does not apply to the plaintiff's claim.

The Fifth Circuit in applying § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), which has a six-month limitation period concluded that this case presented a "hybrid" action in tune with this court's decision of *DelCostello v. International Bhd. of Teamsters*, 462 U.S., 151, 103 S.Ct. 2281 (1983). Their conclusion has precluded

the pilots from any avenue of relief based upon their DFR claim or Section 301 of the LMRA. As will be shown below, their conclusion is in conflict with this court's policy reasons for borrowing the six-month limitation of the NLRA as stated and affirmed in *DelCostello, supra.*

This Court in *DelCostello, supra,* reasoned that it would not apply the state statutes of limitation, because the hybrid action against an employer and union has no close analogy in ordinary state law. This decision sought to reason around the Congressional mandate of the Rules of Decision Act, Rev. Stat. § 721, 1 Stat. 92, by looking to the nature of the claims brought against the employer and the union.

This Court ruled that it had "available a federal statute of limitations actually designed to accommodate a balance of interests very similar to that at stake here – a statute, that is, in fact, an analogy to the present lawsuit more apt than any of the suggested state law parallels. . . . § 10(b) of the National Labor Relations Act . . . " *DelCostello, supra,* 2293.

The facts of this case simply are not a close analogy to *DelCostello, supra,* and therefore not a proper analogy to § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). Here, the employees were not involved in the grievance machinery as in *DelCostello, supra.* Instead, the defendants first contracted those rights away, and then, rather than risk an unfavorable vote when extended for the promised right of ratification, the defendants misrepresented to the airline pilots that they had no choice but to accept the TACA offer of resigning and accepting

meager severance benefits. The employees only recourse for redress was the courts.

This Court's reason for selecting § 10(b) as the most analogous action was the desire to apply a "limitations period attuned to what it viewed as the proper balance between the national interest in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective bargaining system." *DelCostello*, supra, 462 U.S. 170, quoting *United Parcel Service v. Mitchell*, 452 U.S. 56 (1981), 70-71. The employees herein were not allowed to bargain or grieve, or for that matter to settle. Instead they were told to resign, because they had no other choice – moving to El Salvador not being a realistic alternative. Simply, the employer and union executed an agreement and through their fraud and deceit were able to effect an illegal decertification of the union,[3] thereby allowing TACA to

---

[3] After TACA and ALPA executed the July 24, 1985 Pilots Agreement, the ALPA representative assured the pilots of a right to vote on the agreement. Approximately one week later, on August 3, 1985, TACA advised the pilots that they must choose in twelve (12) days either severance pay and retirement benefits, or move to El Salvador to work for TACA. The ALPA representative then represented to the pilots that they had no choice but to accept the TACA offer of August 3, 1985. Based on these misrepresentations, all of the United States pilots chose the severance offered by TACA. This implicitly gave effect to the Pilots Agreement of July 24, 1985 which provided that ALPA was to no longer represent the TACA pilots after August 31, 1985, all in violation of the judicially prescribed methods regulating the termination of collective bargaining representation and the provisions of 29 U.S.C. § 159(a) & (b).

circumvent the previously issued injunction[4] preventing TACA from moving its base to El Salvador.

### B. This Court has recently revisited *DelCostello* in *Chauffeurs*, (March 20, 1990) finding the DFR claim is more analogous to a trust claim.

In *Chauffeurs, Teamsters and Helpers, Local No. 391 vs. Terry, et al.*, U.S. Sup. Ct. No. 88-1719 (March 20, 1990), this Court was presented with the question of whether an employee who seeks relief in the form of back pay for a union's alleged breach of its duty of fair representation has a right to trial by jury. This Court revisited the application of the closest analogy of an action by an employee against the union and employer and stated that the "court in *DelCostello* did not consider the trust analogy, however." *Chauffeurs, supra*, p. 8.

This Court agreed with the union's argument that the employees' duty of fair representation action is comparable to an action by a trust beneficiary against a trustee for breach of fiduciary duty. The Court stated that "Just as a trust beneficiary can sue to enforce a contract entered into on his behalf by the trustee only if the trustee improperly refuses or neglects to bring an action against the third person, RESTATEMENT (Second) of TRUSTS,

---

[4] Although ALPA was the plaintiff in obtaining the injunction issued against TACA in 1983 (affirmed by the Fifth Circuit Court of Appeals in 1984 and certiorari denied by this Court in 1985), and the lower courts have refused to reopen that case, the thrust of the injunction prohibiting the transfer of the TACA base without first complying with the RLA is the underlying basis for the pilots complaint in this action.

*supra*, § 282(2), so an employee can sue his employer for a breach of the collective bargaining agreement only if he shows that the union breached its duty of fair representation in its handling of the grievance, *DelCostello*, 463 U.S., at 163-164." *Chauffeurs* at p.8. It is because of this characteristic of the DFR claim that the trust analogy fits best.

As in the case of *Chauffeurs*, this Court should view this case as one that "is not typical; instead it is a claim consisting of discrete issues that would normally be brought as two claims, one against the employer and one against the union. . . . Consideration of the nature of the two issues in this hybrid action is therefore warranted" *Chauffeurs, supra*, p. 10, footnote 6. If this court treats each issue separately, it may conclude, as it did in *Chauffeurs*, that the § 301 issue is closely analogous to a breach of contract claim and the DFR action is closely analogous to a trust action. However, considering both issues as part of one action, the application of the trust analogy to both the § 301 issue and the DFR issue in this lawsuit would be correct.

Applying the trust analogy to the instant § 301 claim and the DFR claim would not do violence to those national policy reasons as stated in *DelCostello, supra*. This is particularly the case here because the employer and the union worked to collectively misrepresent the facts regarding the pilots choices and to induce them to sever their relationship with their employer and union, in order to illegally move the TACA base outside the jurisdiction of the United States.

The Louisiana Trust Code, L.S.A. 9:2234 has a one year limitation period for a beneficiary to bring an action

against the trustee. It is respectfully suggested that *Chauffeurs* implicitly requires that the Court allow the pilots in this case one year within which to file their hybrid DFR claim. Doing so, the Court would be allowing for filling claims during the shortest of available analogous state law actions promoting prompt resolution of labor law claims without doing violence to the Rules of Decision Act. Rev. Stat. § 721, 1 Stat. 92.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted. This case does not fit the parameters established for *DelCostello* type hybrid claims. More importantly, this Court has clearly expressed its intent to reconsider the *DelCostello* analogies in state law and considers the trust claim as most closely analogous, leading to a one year period for filing this suit and making the same timely filed.

Respectfully submitted,

TOM W. THORNHILL
Counsel of Record
1308 Ninth Street
Slidell, LA 70458
(504) 641-5010

RICHARD A. MACHEN, ESQ.
1400 Gause Boulevard
Slidell, Louisiana 70458

R. NEAL WILKINSON, ESQ.
835 Louisiana Avenue
Baton Rouge, Louisiana 70802

*Attorneys for Cross-Petitioners*
*Frank Landry, et al.*

## APPENDIX AA

MINUTE ENTRY
ARCENEAUX, J.
APRIL 11, 1988

CIVIL
ACTION
NO. 86-3196

FRANK LANDRY, ET AL

VERSUS

SECTION:
"K" (3)

AIRLINE PILOTS' ASSOCIATION,
INTERNATIONAL, AFL-CIO, ET AL

(Filed April 12, 1988)

On April 24, 1987, this Court dismissed the plaintiffs' claims against ALPA and TACA under the Railway Labor Act and ERISA. On March 17, 1988, the Court dismissed the plaintiffs' RICO claims against ALPA, TACA and Charles Huttinger. The only remaining issue between the plaintiffs and ALPA and TACA is the defendants' request for imposition of sanctions under Fed.R.Civ.P. 11 for the allegedly baseless filing of a motion for reconsideration of the Court's dismissal of the Railway Labor Act claims. The Court has determined that sanctions are not warranted in this matter and therefore denies the defendants' request.

In *Thomas v. Capital Sec. Services, Inc.*, 836 F.2d 866 (5th Cir. 1983), the Court of Appeals for the Fifth Circuit, on rehearing, restated its position as to the interpretation of Fed.R.Civ.P. 11. The Court dispensed with the requirement previously imposed upon district courts that specific findings of fact and conclusions of law be stated in every instance in which Rule 11 sanctions were requested. *Id.* at 883. Although the imposition of sanctions remains mandatory upon the finding of a violation of Rule 11, the appropriateness of a sanction is left to the

discretion of the district court, which is to impose the least severe sanctions adequate to serve the purpose of the Rule. *Id.* at 878.

The plaintiffs' motion for reconsideration, while somewhat cryptic, was not baseless. In dismissing the plaintiffs' Railway Labor Act claims, the Court specifically addressed the issue of the point of accrual of the plaintiffs' claims for relief, but did not specifically mention the words "equitable tolling." In view of the enormity of the plaintiffs' claims for damages and the sheer number of plaintiffs, the Court cannot say that the plaintiffs were wrong to file the motion for reconsideration. While the motion could have been prepared with greater care, the Court finds that it was not frivolous.

Accordingly,

IT IS ORDERED that the request of the defendants for the imposition of sanctions is DENIED.

/s/ George Arceneaux, Jr.
United States District Judge

# APPENDIX BB

## SUBCHAPTER IV – LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

### § 185. Suits by and against labor organizations venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

### Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

### § 158a. Providing facilities for operations of Federal Credit Unions

Provision by an employer of facilities for the operations of a Federal Credit Union on the premises of such employer shall not be deemed to be intimidation, coercion, interference, restraint or discrimination within the provisions of sections 157 and 158 of this title, or acts amendatory thereof.

Dec. 6, 1937, c. 3, § 5, 51 Stat. 5.

---

### § 159. Representatives and elections – Exclusive representatives; employees' adjustment of grievances directly with employer

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

**Determination of bargaining unit by Board**

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

**§ 1652. State laws as rules of decision**

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply. June 25, 1948, c. 646, 62 Stat. 944.

---

**29 U.S.C. § 160**

**Complaint and notice of hearing; answer; court rules of evidence applicable**

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member,

agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of Title 28.